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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,092	02/23/2005	Toshiaki Kimura	OGA-013	3275

20374 7590 09/28/2007
KUBOVCIK & KUBOVCIK
SUITE 710
900 17TH STREET NW
WASHINGTON, DC 20006

EXAMINER

TOSCANO, ALICIA

ART UNIT	PAPER NUMBER
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1712

MAIL DATE	DELIVERY MODE
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09/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/525,092	Applicant(s) KIMURA ET AL.	
	Examiner Alicia M. Toscano	Art Unit 1712	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

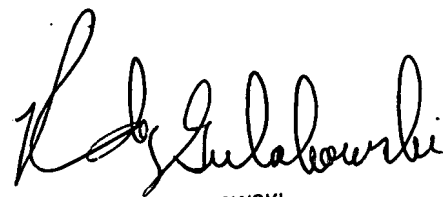
REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments are not persuasive. Firstly, regarding the objected drawings, the Examiner realizes the mistake by the scanning department which incorrectly labeled figures corresponding to the translated foreign priority as new drawings. The problem in IFW has been brought to the attention of the troubleshooters at the Patent Office and will be corrected.

Regarding the Claims, Applicant amends the dtex requirement, however this does not change or overcome the rejection since Tan would meet the new limitations, as set forth on pg 5 of the action dated 5/16/07. Thusly, the amendment will not be entered.

Regarding Applicant's arguments, Applicant argues that the combination of Nishimura, Tan and Kondon fails to disclose or suggest the properties resulting from Applicant's invention. Examiner disagrees. Said properties are not claimed, and even as such would be inherent since the compositional elements are met. If they are not inherent the Examiner requests data to support Applicant's argument. Applicant argues Nishimura fails to disclose unexpected properties resulting from the use of such lubricants for fibers. Examiner disagrees, Applicant has not shown that fibers would have unexpected properties over the flat yarn. It is the Examiner's position that fiber and yarn is functional equivalent, as taught by Tan. Examiner requests evidence to the contrary. Applicant argues Tan does not disclose the fatty acid bisamide as the lubricant and that Tan does not disclose the difficulty of melt spinning high quality polylactic fibers. Examiner disagrees. The inclusion of the fatty acid bisamide is disclosed by Nishimura, Tan is used as evidence that melt spinning and tape yarn formation are functional equivalent processes. Applicant's arguments drawn to such are thusly moot. That Tan does not realize the difficulty in spinning said fibers is moot. The composition of Nishimura and Tan must be spinnable, since the compositional elements of Applicant's claims are met. Examiner requests evidence to the contrary. Applicant argues Kondo does not disclose that the invention can improve wear resistance. Examiner disagrees. Said argument is moot, the compositional elements are met and said property must be inherent. Applicant argues Obuchi does not disclose the use of a fiber which has a fineness of 0.1-50 dtex, Examiner agrees but points out that Tan is used to make up for the deficiency.



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